



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **Petition for Exemption from the**

#### **Vehicle Theft Prevention Standard;**

#### **FUJI HEAVY INDUSTRIES U.S.A., INC.**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru [confidential] vehicle line in accordance with 49 CFR Part 543, Exemption from the Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard. FUSA requested confidential treatment for specific information in its petition. The agency will address FUSA's request for confidential treatment by separate letter.

**DATES:** The exemption granted by this notice is effective beginning with the 2013 model year (MY).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43-439, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Ms. Ballard's phone number is (202) 366-0846. Her fax number is (202) 493-2990.

**SUPPLEMENTAL INFORMATION:** In a petition dated October 25, 2011, FUSA requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Subaru [confidential] vehicle line, beginning with the 2013 MY. The petition has been filed pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, FUSA provided a detailed description and diagram of the identity, design and location of the components of the antitheft device for the Subaru [confidential] vehicle line. FUSA stated that all Subaru [confidential] vehicles will be equipped with a passive, transponder-based electronic immobilizer device as standard equipment. FUSA stated that the antitheft device and the immobilization features are constructed and designed within the vehicle's Controller Area Network electrical architecture. Major components of the antitheft device will include a transponder, a passive immobilizer system, a key ring antenna, engine control unit and a meter engine control unit. FUSA stated that system immobilization is automatically activated when the key is removed from the vehicle's ignition switch, or after 30 seconds if the ignition is simply moved to the off position and the key is not removed. The device will also include a visible and audible alarm, and panic mode feature. The alarm system will monitor door status and key identification. Unauthorized opening of a door will activate the

alarm system causing sounding of the horn and flashing of the hazard lamps. FUSA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, FUSA provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, FUSA conducted tests based on its own specified standards and provided a list of information of the tests it conducted. FUSA believes that its device is reliable and durable because the device complied with its own specific requirements for each test. Additionally, FUSA stated that since the immobilization features are designed and constructed within the vehicle's overall Controller Area Network Electrical Architecture, the antitheft device cannot be separated and controlled independently from this network.

FUSA stated that it believes that historically, NHTSA has seen a decreasing theft rate trend when electronic immobilization has been added to alarm systems. FUSA stated that it presently has immobilizer devices on all of its product lines (Forester, Tribeca, Impreza, Legacy and Outback models) and it believes the data show immobilization has had a demonstrable effect in lowering its theft rates. Review of the theft rates published by the agency for Subaru vehicles from model years' (MYs') 2007 - 2009 revealed that while there is some variation, the theft rates for Subaru vehicles have on average remained below the median theft rate of 3.5826. Specifically, the agency's theft rate data for the Subaru Tribeca, Forester, Impreza, Legacy and Outback vehicle lines using an average of 3 MYs' data is 0.4396, 0.5677, 0.9135, 0.7681 and 0.4394 respectively.

FUSA also provided a comparative table showing how its device is similar to other manufacturers' devices that have already been granted an exemption by NHTSA. In its

comparison, FUSA makes note of Federal Notices published by NHTSA in which manufacturers have stated that they have seen reductions in theft due to the immobilization systems being used. Specifically, FUSA notes claims by Ford Motor Company that its 1997 Mustangs with immobilizers saw a 70% reduction in theft compared to its 1995 Mustangs without immobilizers. FUSA also noted its reliance on theft rates published by the agency which showed that theft rates were lower for Jeep Grand Cherokee immobilizer equipped vehicles (model year 1999 through 2003) compared to older parts-marked Jeep Grand Cherokee vehicles (model year 1995 and 1998). FUSA stated that it believes that these comparisons show that its device is no less effective than those installed on lines for which the agency has already granted full exemption from the parts-marking requirements.

The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions. Based on the evidence submitted by FUSA, the agency believes that the antitheft device for the Subaru [confidential] vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part if it determines that based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information FUSA provided about its device.

The agency concludes that the device will provide the five types of performance listed in §543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full FUSA's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and thereafter, the line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, §543.9(c)(2) provides for the submission of petitions "to modify an exemption

to permit the use of an antitheft device similar to but differing from the one specified in that exemption.”

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Issued on: January 6, 2012

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Christopher J. Bonanti  
Associate Administrator for  
Rulemaking

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**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

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